

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:12-CR-277-H

UNITED STATES OF AMERICA)	
)	
v.)	ORDER OF DETENTION PENDING
)	TRIAL
RAFAEL ACEVEDO RODRIGUEZ,)	
)	
Defendant.)	

This case came before the court today for hearing on the government's motion, pursuant to 18 U.S.C. § 3142(f), to detain defendant pending trial. The government presented the testimony of a detective with the Johnston County Sheriff's Office. The defendant presented the testimony of the proposed third-party custodian, his estranged wife. The court also reviewed the pretrial services report. After careful consideration pursuant to 18 U.S.C. § 3142(g) of the credible information and argument submitted, and based on the findings and reasons stated below and in open court, the court finds by a preponderance of the evidence that there is no condition or combination of conditions that will reasonably assure defendant's appearance as required, and by clear and convincing evidence that there is no condition or combination of conditions that will reasonably assure the safety of any other person and the community before trial if defendant is released. The government's motion is therefore GRANTED.

Background

Defendant was charged in a one-count indictment on 15 August 2012 with possession of a firearm by a felon on 23 March 2012 in violation of 18 U.S.C. § 922(g)(1) and 924. The evidence presented at the hearing showed that the charges arise from defendant's pointing a .22

caliber rifle at a woman at a residence in the course of a dispute. He later admitted to police that he had purchased the rifle.

Discussion

The law requires that defendant be detained pending trial based on the following principal findings and reasons: evidence showing that the government has a strong case, including the evidence reviewed above; the gun-related nature of the offense charged; the circumstances of the offense charged, including the pointing of the firearm at another person; defendant's criminal record, including a felony conviction for sexual abuse of a minor, another felony conviction for failure to register as a sex offender, a third felony conviction, six misdemeanor convictions, a formal probation violation, commission of an offense while on probation, and two failures to appear; the danger of continued gun-related offense conduct by defendant if released; the unsuitability of the proposed third-party custodial arrangement due to her apparent inability to take on the responsibility, the risk that her resumption of cohabitation with defendant could jeopardize her disability benefits, and the extent of the risk of danger and flight presented by defendant; and the other findings and reasons stated in open court.

The court considered evidence offered as mitigating. It finds, however, that the factors favoring detention outweigh such evidence.

Conclusion

IT IS THEREFORE ORDERED that defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an

attorney for the government, the person in charge of the corrections facility shall deliver defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

This, the 20th day of September 2012.



James E. Gates
United States Magistrate Judge